IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Hukmi Chand Vs. Vijay Lakshmi

**S.B.CR.MISC. PETITION NO.525/2005**

against the order dt.16.8.2004 passed by Judge, Family Court, Jodhpur in Cr.Case No.118/2003.

DATE OF ORDER :: August 18, 2006

**PRESENT**

**HON'BLE MR.JUSTICE H.R.PANWAR**

Mr. Nagraj Goswami, for the petitioner.

None present for non-petitioner though served.

**BY THE COURT:**

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 16.8.2004 passed by the Judge, Family Court, Jodhpur (for short' the trial court' hereinafeter), whereby the trial court granted monthly allowance of interim maintenance at the rate of Rs.1200/- from the date of application i.e. 21.7.2003 in favour of non-petitioner and against the petitioner. Aggrieved by the order impugned, the

petitioner has filed the instant criminal misc. petition.

I have heard learned counsel for the petitioner. No one appears for the non-petitioner though served. I have gone through the order impugned.

From a perusal of the order impugned, it appears that the petitioner came with the plea that the non-petitioner is employed in Anganwari at Bilara and thereafter she is working in a hospital, whereby she earns a sum of Rs.3000/- per month. Apart from this, the petitioner pleaded in the application that the non-petitioner is undertaking the work of tailoring and earns Rs.3000/- per month. From a perusal of the order impugned, it nowhere appears that the trial court has considered this aspect of the matter when the petitioner came with the plea that the non-petitioner is employed in Anganwari though with regard to plea of working in a hospital is vague but there is definite pleading with regard to the employment of the non-petitioner in Anganwari. From the order impugned, it appears that the fact specifically pleaded by the petitioner has not been considered. In the circumstances, therefore, in my view, the trial court fell in error in granting the interim maintenance ignoring the income of the non-petitioner and, therefore, the order impugned deserves to be set aside and the matter deserves to be remanded to the

trial court to be decided afresh keeping in view the pleadings of the parties.

In the result, the misc. petition is allowed. Order impugned dt. 16.8.2004 passed by the Judge, Family Court, Jodhpur in Criminal Case No.118/2003 is set aside. The matter is remanded to the Judge, Family Court, Jodhpur to decide the application for interim maintenance afresh keeping in view the pleadings of the parties, preferably within two months from the date of receipt of this order.

**[H.R.PANWAR],J.**

m.asif/-